

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS PAUL KIRSCH,

Defendant.

CR 20–44–M–DLC

ORDER

Before the Court is United State Magistrate Judge Kathleen L. DeSoto’s Findings and Recommendation Concerning Plea. (Doc. 24.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Mr. Kirsch is charged with one count of prohibited person in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1) and one count of possession of an unregistered firearm, in violation of 26 U.S.C. §§ 5841, 5861(d), and 5871. (Doc. 1.) Based on Mr. Kirsch’s appearance before Judge DeSoto, pursuant to Federal Rule of Criminal Procedure 11, she recommends that this

Court adjudge him guilty of one count of prohibited person in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1), defer acceptance of the Plea Agreement (Doc. 19) until it has reviewed the agreement and the Presentence Investigation Report, and impose the agreed forfeiture against him. (Doc. 24 at 2.) Reviewing these recommendations for clear error, the Court finds none. As is the Court's practice, any decision regarding acceptance of the plea agreement and dismissal of Count II will be deferred until sentencing.

Accordingly, IT IS ORDERED that the Court ADOPTS the Findings and Recommendation (Doc. 24) IN FULL.

IT IS FURTHER ORDERED that Mr. Kirsch's motion to change plea (Doc. 15) is GRANTED, and he is adjudged guilty of one count of prohibited person in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1).

IT IS FURTHER ORDERED that, pursuant to 18 U.S.C. § 924(d), Mr. Kirsch shall forfeit any firearms and ammunition involved and used in any knowing violation of the offense for which he has been adjudged guilty.

DATED this 16th day of December, 2020.



Dana L. Christensen, District Judge
United States District Court